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10 Attorneys for Plaintiff MORGAN CREEK PRODUCTIONS, INC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 MORGAN CREEK
14 PRODUCTIONS, INC.,

15 Plaintiff,

16 vs.

17 NINTENDO OF AMERICA, INC.,
18 DOES 1 - 10, Inclusive,

19 Defendant.

Case No. **CV08-03866**

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF FOR
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

20 Plaintiff alleges as follows:

21 **JURISDICTION**

22 1. This is a copyright infringement action. This Court has subject
23 matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. Plaintiff seeks
24 injunctive relief, actual damages (or statutory damages at Plaintiff's election
25 pursuant to 17 U.S.C. § 504(c)(1)), costs and attorney's fees, for the willful
26 infringement of the musical composition and sound recording "You're So
27 Cool."

28 **VENUE**

29 2. Venue in this judicial district is proper under 28 U.S.C. § 1400(a)
30 as Defendant may be found in this district and Plaintiff's principal place of

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

BY

1 business is in this district.

2 **THE PARTIES**

3 3. Plaintiff Morgan Creek Productions, Inc. ("Morgan Creek") is a
4 Delaware corporation with its principal place of business in the County of Los
5 Angeles, State of California.

6 4. Plaintiff is informed and believes and on that basis alleges that
7 Defendant Nintendo of America, Inc. ("Nintendo") is a Washington corporation
8 with its principal place of business in the State of California.

9 5. Plaintiff is informed and believes and thereon alleges that the true
10 names and capacities, whether individual, corporate, associate or otherwise,
11 of defendants herein named as Does 1 through 10, inclusive, are unknown to
12 Plaintiff, who therefore sues said Defendants by such fictitious names.
13 Plaintiff will seek to amend this complaint to state the true names and
14 capacities of these Doe defendants when they have been ascertained. For
15 convenience, any reference throughout this Complaint to a named Defendant
16 shall also refer to a Doe defendant.

17 6. At all times herein mentioned each Defendant was the agent,
18 servant and representative of the other Defendants and was acting within the
19 course and scope of such agency.

20 **FIRST CLAIM FOR RELIEF**

21 **COPYRIGHT INFRINGEMENT**

22 **[SOUND RECORDING]**

23 **AGAINST ALL DEFENDANTS**

24 7. Plaintiff realleges and incorporates by reference all allegations
25 contained in paragraphs 1 through 6 as though said allegations were set forth
26 in their entirety herein.

27 8. Plaintiff is the owner of the copyright in and to the musical
28 composition and sound recording entitled "You're So Cool" written by Hans

1 Zimmer that was released as part of the soundtrack to Morgan Creek's 1993
2 motion picture "True Romance."

3 9. Plaintiff duly complied with all required provisions of the copyright
4 laws of the United States applicable to musical compositions and sound
5 recordings, including but not limited to, duly registering and receiving a
6 copyright in and to the sound recording with the United States Copyright
7 Office. Specifically, the musical composition and sound recording were
8 registered with the United States Copyright Office on or about August 11,
9 1993 and given registration number SR 193-949.

10 10. Sometime within the past three years, Defendant used the sound
11 recording of "You're So Cool" without authorization in a television
12 advertisement for the Nintendo "GameCube." Plaintiff is informed and
13 believes and thereon alleges that said Defendant also used the sound
14 recording at issue herein in other forum in order to generate sales for their
15 product.

16 11. Defendant infringed Plaintiff's copyright in the sound recording by
17 using the sound recording without authorization.

18 12. In undertaking the conduct complained of in this action, Defendant
19 knowingly and intentionally violated Plaintiff's rights.

20 13. Based upon the Defendant's willful infringement, Plaintiff is
21 entitled to actual damages (or may hereafter elect statutory damages).
22 Plaintiff is also entitled to an award of attorney's fees and costs.

23 14. The amount of actual damages shall be proven at the time of trial.

24 15. Additionally, Defendant has caused and continue to cause great
25 injury to Plaintiff, which damage cannot be accurately computed, and unless
26 this Court restrains this Defendant from further infringements, Plaintiff will
27 suffer irreparable injury, for which there is no adequate remedy at law.

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**SECOND CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT
[MUSICAL COMPOSITION]
AGAINST ALL DEFENDANTS**

16. Plaintiff realleges and incorporates by reference all allegations contained in paragraphs 1 through 6 as though said allegations were set forth in their entirety herein.

17. Plaintiff is the owner of the copyright in and to the musical composition and sound recording entitled "You're So Cool" written by Hans Zimmer that was released as part of the soundtrack to Morgan Creek's 1993 motion picture "True Romance."

18. Plaintiff duly complied with all required provisions of the copyright laws of the United States applicable to musical compositions and sound recordings, including but not limited to, duly registering and receiving a copyright in and to the musical composition with the United States Copyright Office. Specifically, the musical composition and sound recording were registered with the United States Copyright Office on or about August 11, 1993 and given registration number SR 193-949.

19. Sometime within the past three years, Defendant used the musical composition of "You're So Cool" without authorization in a television advertisement for the Nintendo "GameCube." Plaintiff is informed and believes and thereon alleges that said Defendant also used the musical composition at issue herein in other forum in order to generate sales for their product.

20. Defendant infringed Plaintiff's copyright in the musical composition by using the musical composition without authorization.

21. In undertaking the conduct complained of in this action, Defendant knowingly and intentionally violated Plaintiff's rights.

1 22. Based upon the Defendant's willful infringement, Plaintiff is
2 entitled to actual damages (or may hereafter elect statutory damages).
3 Plaintiff is also entitled to an award of attorney's fees and costs.

4 23. The amount of actual damages shall be proven at the time of trial.

5 24. Additionally, Defendant has caused and continue to cause great
6 injury to Plaintiff, which damage cannot be accurately computed, and unless
7 this Court restrains this Defendant from further infringements, Plaintiff will
8 suffer irreparable injury, for which there is no adequate remedy at law.

9
10 WHEREFORE, Plaintiffs pray as follows:

11 1. That Defendant and all persons acting under the direction, control,
12 permission or authority of said Defendant be permanently enjoined and
13 restrained from using the copyrighted sound recording and musical
14 composition and from causing or permitting said copyrighted musical
15 composition and sound recording to be sold, distributed, broadcast or
16 disseminated in connection with any broadcast or other means of
17 dissemination used by Defendant.

18 2. That Defendant be ordered to pay Plaintiff's actual damages in an
19 amount to be proven at the time of trial. Alternatively, in the event such an
20 election is made by Plaintiff, that said Defendant be ordered to pay statutory
21 damages as specified in 17 U.S.C. § 504(c)(1) for willful infringement. Plaintiff
22 reserves the right to elect between statutory and actual damages as such
23 election is permitted under 17 U.S.C. § 504.

24 3. That Defendant be ordered to pay the Plaintiff's costs and
25 attorney's fees.

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1 4. For such other and further relief as this Court may deem just and
2 proper.

3 Dated: June 12, 2008

LAW OFFICES OF ALAN S. GUTMAN

4
5 By: 

6 Alan S. Gutman

7 Attorneys for Plaintiff

MORGAN CREEK PRODUCTIONS, INC.

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9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial by jury.

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12 Dated: June 12, 2008

LAW OFFICES OF ALAN S. GUTMAN

13
14 By: 

15 Alan S. Gutman

16 Attorneys for Plaintiff

17 MORGAN CREEK PRODUCTIONS, INC.
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